Supreme Court, U.S.
FILED
FEB 16 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1053

In the Supreme Court of the United States

OCTOBER TERM, 1987

HERMENA PERLMUTTER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether it was unlawful for petitioner, a bank customer, to structure currency transactions in order to cause a financial institution to fail to file Currency Transaction Reports, or to file misleading Currency Transaction Reports.

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OPINION BELOW

The judgment order of the court of appeals (Pet. App. 1a-2a) is unreported. The opinions of the district court (Pet. Supp. App. 1-36) are reported at 636 F. Supp. 219 and 656 F. Supp. 782.

JURISDICTION

The judgment of the court of appeals was entered on October 8, 1987. The petition for a writ of certiorari was filed on December 11, 1987, and is therefore out of time under Rule 20.1 of the Rules of this Court. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a bench trial in the United States District Court for the Southern District of New York, petitioner was convicted on one count of causing material informa-

tion to be concealed from the Internal Revenue Service (IRS), in violation of 18 U.S.C. 1001 and 2, and one count of causing a financial institution to fail to file a required Currency Transaction Report, in violation of 31 U.S.C. 5312(a)(2), 5313, and 5322, and 18 U.S.C. 2. Imposition of petitioner's sentence was suspended, and she was placed on probation for three years.

1. Under federal law, a financial institution is required to file a Currency Transaction Report (CTR) whenever a customer engages in a currency transaction in excess of $10,000. 31 U.S.C. 5313; 31 C.F.R. 103.22(a) (1982).[1] The

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[1] 31 U.S.C. 5313(a) provides in pertinent part:

> When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or under circumstances the Secretary prescribes by regulations, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes.

At the time of the offenses, 31 C.F.R. 103.22(a) (1982) provided:

> Each financial institution shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution, which involves a transaction in currency of more than $10,000. Such reports shall be made on forms prescribed by the Secretary and all information called for in the forms shall be furnished.

The Currency Transaction Report form requires information regarding the identity of both the individual conducting the transaction and the individual or organization for whom the transaction is conducted. The form also contains the following instruction (Pet. Supp. App. 11):

> Multiple transactions by or for any person which in [any] one day total more than $10,000 should be treated as a single transaction if the financial institution is aware of them.

evidence at trial showed that petitioner, an attorney, laundered more than $200,000 in cash during 1981 and 1982 for three clients whom she represented in connection with purchases of real estate.[2] In each case, the client either had failed to file income tax returns for the period in question or had declared almost no income on his tax returns. In each case, petitioner received cash from her client and used it to purchase negotiable instruments in a manner that either caused the bank to file a CTR that did not disclose the interest of petitioner's client in the funds or caused the bank not to file a CTR at all.

a. In the first transaction, petitioner represented Daniel Washington, who was purchasing four apartment buildings in Manhattan. Washington declared no income from 1979 to 1982 except for $7,900 in 1980, which he claimed to have earned as a "clerk" for one of his corporations. At the closing on the apartment building purchase, which occurred in March 1981, Washington paid $29,000 to the seller and $20,500 to the title insurance company for back taxes on the property. The checks that were used to make those payments were obtained in the following manner:

To cover the $29,000 to be paid to the seller, petitioner on March 11 used cash supplied by Washington to purchase 14 checks at the Emigrant Savings Bank. The checks were in different amounts, all under $5,000. Some were made payable to a corporation that petitioner had incorporated for Washington, some were made payable to petitioner as attorney, and some were made payable to the seller.[3] The bank prepared a CTR for the transaction, but

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[2] The summary of the evidence is taken from the government's brief in the court of appeals.

[3] Petitioner had various personal accounts at the Emigrant Savings Bank. Although it was necessary to be an account holder to purchase

the CTR did not reflect that the transaction was made on behalf of anyone other then petitioner.[4]

Petitioner also made arrangements to generate the funds to cover the $20,500 that was to be paid to the title company. On March 11, petitioner and her associate David Muraskin each deposited $9,800 in cash into their respective accounts at another bank, the Merchants Bank of New York. The following day, they each deposited an additional $200 in cash at a different branch of that bank and drew a $10,000 check on their respective accounts, payable to Washington's corporation. They then redeposited those checks into petitioner's account (Pet. Supp. App. 5-6). Petitioner then drew a certified check for $20,500 from her account to use at the closing.[5]

b. The second real estate transaction involved the August 1981 purchase of a house for Glen and Diane Brown. The house was priced at $140,000. The Browns,

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teller's checks, there was no limit (up to $1 million) on the amount of a teller's check that an account holder could purchase.

[4] Petitioner had several personal accounts with Emigrant Savings Bank. Teller's checks could only be purchased by an account holder. The bank's branch manager testified that, since the bank was not a commercial bank, she assumed that petitioner's transactions were personal. The manager, who filled out three CTRs with respect to petitioner's transactions during 1981 and 1982, also testified that she almost always told a customer who engaged in a large transaction that she was filling out a CTR. On one occasion, petitioner acknowledged the information and stated that she "had nothing to hide."

[5] The two $9,800 transactions were the subjects of Counts One and Two, on which petitioner was acquitted. The district court found a reasonable doubt that petitioner had participated in or directed the splitting of the $19,600 into two transactions (Pet. Supp. App. 15-16). The court cited the fact that a CTR was filed the same day for petitioner's $29,000 in transactions at Emigrant Savings Bank and found there was no evidence as to when petitioner learned of the CTR requirement or whether petitioner filled out the deposit slips (*ibid.*).

who had filed no income tax returns for the years 1979-1982, offered that sum on the spot.[6] To cover the down payment, petitioner purchased four teller's checks at the Emigrant Savings Bank with $14,000 in cash, mainly in small bills. The checks were all payable to petitioner as attorney, and were in the amounts of $5,000, $2,000, and two for $3,500. Petitioner deposited the checks over a two-day period in her special account at the bank. The $126,000 balance of the purchase price was paid at the closing on November 9, 1981. On that day, petitioner deposited $120,000 in small bills into her special account at the Merchant's Bank, drew a certified check, payable to the vendor, for that amount on her account, and added a $6,000 bank teller's check purchased that day to make up the difference. CTRs were filed for both the $14,000 and the $120,000 cash transactions, but the CTRs did not disclose that petitioner was acting on the Browns' behalf. Pet. Supp. App. 8-9.[7]

c. The final real estate transaction involved the October 1982 purchase of a cooperative apartment in the Bronx for $30,000 for Peter Monsanto and Debra Manson, who failed to file income tax returns for the years 1978 through 1982.[8] The total purchase price for the

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[6] The transactions relating to the purchase of this property were originally the subject of Counts Three through Six of the indictment. Those counts were dismissed before trial on the government's motion.

[7] Petitioner was charged in Count Ten with making a false statement to an IRS agent during an IRS investigation by stating that she had no records regarding the disbursement of the $120,000. The district court found insufficient evidence to convict petitioner of that offense (Pet. Supp. App. 19-22).

[8] Monsanto initially had Perlmutter form a corporation, Doll Holding Corp., to purchase the apartment, but when the seller refused to transfer the co-op shares to a corporation, Monsanto had Debra Manson's name substituted for his own on the contract of sale.

apartment was $30,000, with $3,000 payable at the time the contract was signed and the balance payable at closing. At the time of the closing, Monsanto produced an attache case containing between $25,000 and $30,000 in small bills, which petitioner's former secretary and Monsanto counted in petitioner's office. When petitioner returned, the secretary gave her the attache case. Petitioner then had her secretary purchase two $5,000 teller's checks from the Republic National Bank, which the secretary did on October 13 and 14.

At the closing, the $27,000 purchase price was paid with the two $5,000 Republic National Bank cashier's checks purchased by petitioner's secretary (both of which were payable to petitioner); ten $500 money orders, payable to the vendor, which had been purchased from the Union Federal Savings Bank and all of which listed the "sender" as "Debra Manson"; and two October 14, 1982, Emigrant Savings Bank teller's checks (one for $5,000, to the order of petitioner, and one for $7,000, to the order of Debra Manson). The vendor of the property testified that in the hundreds of closings he had attended, never had he been paid with such an assortment of checks.[9]

An analysis of the Union Bank money orders revealed petitioner's handwriting on five of them and David Muraskin's handwriting on the other five. Although the two Emigrant Savings teller's checks were both purchased at the same branch, each check was obtained from a different teller, indicating that two persons stood in different lines at a branch that was not petitioner's usual branch. Petitioner's secretary identified the handwriting on the cash deposit slip which was located for one of the checks as David Muraskin's and the government relied at trial on

[9] The purchase of the two checks from the Emigrant Savings Bank served as the basis for Counts Seven and Eight, on which petitioner was convicted.

the inference that petitioner was the person who had purchased the other check.

2. Before trial, petitioner moved to dismiss each of the CTR and false statement counts, and the district court granted the motion (Pet. Supp. App. 23-36). The court ruled that it was not criminal for petitioner, as a private individual, to structure her financial transactions in a way that would affect the accuracy of the banks' Currency Transaction Reports (*id.* at 3, 24-36). While the government's appeal was pending, the court of appeals held in *United States* v. *Heyman,* 794 F.2d 788 (2d Cir.), cert. denied, No. 86-5365 (Dec. 1, 1986), that a person could be held criminally responsible under 18 U.S.C. 2(b) for willfully causing a financial institution to fail to file a CTR for a cash transaction in excess of $10,000.

The district court then reversed its earlier decision dismissing the charges against petitioner. After a bench trial, the court convicted petitioner on Counts seven and eight, the counts relating to the purchase of the cooperative apartment by Peter Monsanto and Debra Manson (Pet. Supp. App. 1-22). Although the district court found reasonable doubt as to petitioner's intent with respect to the Daniel Washington transactions, the court found that "at least as of the time of the [Monsanto co-op purchase] and as a consequence of the Washington transaction [petitioner] had the requisite knowledge" of the reporting requirements to require a finding of guilt (*id.* at 17). The court concluded that the circumstances surrounding the Monsanto transaction "demonstrate [petitioner's] intent to circumvent the requirements, as well as her connection to the * * * transactions" (*ibid.*) and that she "knowingly and intentionally caused Emigrant, by the device of splitting up a $12,000 transaction into amounts less than $10,000, to fail to file a CTR" (*id.* at 19).

The court of appeals affirmed petitioner's convictions by judgment order (Pet. App. 1a-2a). The court based its ruling on its own prior decisions in *United States* v. *Nersesian,* 824 F.2d 1294 (2d Cir. 1987), and *United States* v. *Heyman, supra* (Pet. App. 2a).

ARGUMENT

1. Petitioner contends (Pet. 6-15) that this Court should review the government's theory that it is illegal to structure currency transactions so as to avoid the currency transaction reporting requirements. Although there has been some division in the past among the circuits on this and related issues arising from prosecutions for causing financial institutions to fail to file CTRs, that question does not warrant review by this Court. Congress has recently enacted the Money Laundering Control Act of 1986, which is included as Subtitle H of the Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, § 1351, 100 Stat. 3207. The Money Laundering Control Act was expressly designed to overrule the cases that conflict with the result reached by the court of appeals here. Furthermore, the regulations regarding CTRs have recently been amended to clarify that financial institutions are obligated to file CTRs regarding multiple transactions in a single day that total in excess of $10,000. 31 C.F.R. 103.22(a) (1987); see 52 Fed. Reg. 11437 (1987). The new statute and regulations should entirely vitiate any continuing significance of the question presented in the petition. Accordingly, petitioner's claim, which in any event is meritless even under the prior statutory scheme, does not warrant review by this Court.[10]

[10] This Court has twice previously denied petitions for a writ of certiorari in cases raising the same question. *United States* v. *Heyman* 794 F.2d 788 (2d Cir. 1986), cert. denied, No. 86-5365 (Dec. 1, 1986), and *United States* v. *Giancola,* 783 F.2d 1549 (11th Cir.), cert. denied, No. 86-491 (Dec. 15, 1986).

a. Under Section 5313 and its accompanying regulations, only financial institutions have a duty to file CTRs in connection with cash transactions. Nonetheless, several courts of appeals have recognized that under 18 U.S.C. 2(b) a defendant may be held liable for causing a financial institution to violate its statutory duties. See, *e.g.*, *United States* v. *Richeson,* 825 F.2d 17 (4th Cir. 1987); *United States* v. *Nersesian,* 824 F.2d 1294 (2d Cir. 1987); *United States* v. *Heyman,* 794 F.2d 788 (2d Cir. 1986), cert. denied, No. 86-5365 (Dec. 1, 1986); *United States* v. *Cook,* 745 F.2d 1311 (10th Cir. 1984), cert. denied, 469 U.S. 1220 (1985); *United States* v. *Giancola,* 783 F.2d 1549 (11th Cir. 1986), cert. denied, No. 86-491 (Dec. 15, 1986); *United States* v. *Puerto,* 730 F.2d 627 (11th Cir.), cert. denied, 469 U.S. 847 (1984); *United States* v. *Tobon-Builes,* 706 F.2d 1092 (11th Cir. 1983). See also *United States* v. *Thompson,* 603 F.2d 1200 (5th Cir. 1979).[11]

Other courts have taken a contrary view, holding that, because Section 5313 and the applicable regulations do not themselves impose on third parties a duty to file CTRs, 18 U.S.C. 2(b) cannot be read to impose criminal liability on persons who, by structuring their deposits, cause a financial institution to fail to file a CTR. See, *e.g.*, *United States* v. *Gimbel,* 830 F.2d 621 (7th Cir. 1987); *United States* v. *Larson,* 796 F.2d 244 (8th Cir. 1986); *United States* v. *Varbel,* 780 F.2d 758 (9th Cir. 1986).[12]

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[11] Petitioner's reliance (Pet. 10) on the Eleventh Circuit's decision in *United States* v. *Denemark,* 779 F.2d 1559 (1986), is misplaced, because the defendant in that case did not transact more than $10,000 in business at a single bank. When a defendant engages in that conduct, the Eleventh Circuit has agreed with the court below that a bank is required to file a CTR. *United States* v. *Cure,* 804 F.2d 625, 629 (1986).

[12] Contrary to petitioner's contention, the First Circuit's position is not inconsistent with the decision in this case. In *United States* v.

Whatever the merit of the decisions from the Seventh, Eighth, and Ninth Circuits in construing Section 5313, Congress has totally revised that statute by enacting the Money Laundering Control Act of 1986. The explicit purpose of the new Act was to overrule the decisions in *Anzalone* and *Varbel* and to codify the Eleventh Circuit's decision in *Tobon-Builes*. Section 1354 of the Act, entitled "Structuring Transactions to Evade Reporting Requirements Prohibited," created a new section of Title 31 (Section 5324), which provides, in pertinent part, as follows:

> No person shall for the purpose of evading the reporting requirements of section 5313(a) with respect to such transaction—
>
> (1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a);
>
> (2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) that contains a material omission or misstatement of fact; or

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Anzalone, 766 F.2d 676 (1985), the First Circuit refused to hold a bank customer liable under 18 U.S.C. 2(b) for causing a bank to fail to file a CTR. In that case, however, the defendant purchased a number of checks on separate days, and the government's argument to the First Circuit did not distinguish those separate-day deposits from the few cash deposits aggregating to more than $10,000 that had been made on a single day. See 766 F.2d at 684 (Aldrich, J., concurring). The First Circuit has since explained that "*Anzalone* did *not* decide whether a customer engages in a reportable transaction when he obtains more than $10,000 by receiving a total of three transfers of currency from two branches of the same bank in a single day. *Anzalone* thus does not foreclose a holding that [those kinds] of transactions are reportable." *United States* v. *Bank of New England, N.A.*, 821 F.2d 844, 851 (1st Cir.), cert. denied, No. 87-368 (Nov. 7, 1987) (emphasis in original).

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

By its terms, the statute imposes criminal liability for causing a financial institution to fail to file a CTR as well as for structuring deposits, as petitioner did here, for the purpose of evading the reporting requirements of Section 5313. In formalizing these statutory obligations, Congress made clear that its purpose was to overrule the First and Ninth Circuit decisions in *Anzalone* and *Varbel*. The Senate Committee on the Judiciary, reporting favorably on an identical provision in S. 2683, an earlier version of the money laundering bill, stated (S. Rep. 99-433, 99th Cong., 2d Sess. 21-22 (1986)):

> Under present law, money launderers are successfully prosecuted in some judicial circuits for causing financial institutions not to file reports on multiple currency transactions totaling more than $10,000 or causing financial institutions to file incorrect reports. In such cases, the actual money launderers are charged with violation of 18 U.S.C. 2 (aiding and abetting or causing another to commit an offense) and section 1001 (concealing from the Goverment a material fact by a trick, scheme, or device). For example, in *United States* v. *Tobon-Builes,* 706 F.2d 1092 (11th Cir. 1983), the Eleventh Circuit Court of Appeals upheld a conviction under 18 U.S.C. 1001 where the defendants had engaged in a money laundering scheme in which they had structured a series of currency transactions, each one less than $10,000 but totaling more than $10,000, to evade the reporting requirements. * * * In contrast, the First Circuit Court of Appeals, in *United States* v. *Anzalone,* 766 F.2d 676 (1st Cir. 1985), the Eleventh Circuit Court of Appeals in

> *United States* v. *Denemark*, 779 F.2d 1559 (11th Cir. 1986), and the Ninth Circuit Court of Appeals in *United States* v. *Varbel*, 780 F.2d 758 (9th Cir. 1986) have held that structuring currency transactions to avoid the reporting requirements did not violate 18 U.S.C. section 1001.
>
> Subsection (h) would codify *Tobon-Builes* and like cases and would negate the effect of *Anzalone*, *Varbel* and *Denemark*. It would expressly subject to potential liability a person who causes or attempts to cause a financial institution to fail to file a required report or who causes a financial institution to file a required report that contains material omissions or misstatements of fact. In addition, the proposed amendment would create the offense of structuring a transaction to evade the reporting requirements, without regard to whether an individual transaction is, itself, reportable under the Bank Secrecy Act.

The House intended precisely the same result when it formulated a virtually identical version of the money laundering provisions. The Committee on Banking, Finance and Urban Affairs stated (H.R. Rep. 99-746, 99th Cong., 2d Sess. 18-19 (1986)):

> In some judicial circuits, money launderers have been successfully prosecuted for causing financial institutions not to file reports on such multiple currency transactions. In such cases, defendants are charged with violations of 18 U.S.C. 2 (aiding and abetting or causing another to commit an offense) and Section 1001 (concealing from the government a material fact by a trick, scheme, or device).[13]

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[13] Here, the House Report cited the Eleventh Circuit's decision in *Tobon-Builes*. H.R. Rep. 99-746, *supra*, at 18 n.1.

> In contrast, other cases have held that the Act and its regulations impose no duty on the customer to inform the financial institution of the structured nature of the transactions, that the reporting duties are placed solely upon the financial institution, and therefore, only a financial institution can directly violate the reporting requirements.[14]
>
> The Committee believes that Section 2 of H.R. 5176 would resolve the legal issues raised by the various circuit courts by expressly subjecting to potential liability a person who causes or attempts to cause a financial institution to fail to file a required report or who causes a financial institution to file a required report that contains material omissions or misstatements of fact. In addition, it would create the offense of structuring a transaction to evade the reporting requirements, without regard for whether an individual transaction is, itself, reportable under the Bank Secrecy Act.

In light of this new legislation, there is no reason to expect that the previous conflict among the circuits will persist. Accordingly, review by this Court is unwarranted.

b. In any event, the court of appeals' decision is correct under the law as it existed prior to the enactment of the Money Laundering Control Act.

The court of appeals correctly followed its earlier decisions in *United States* v. *Nersesian, supra,* and *United States* v. *Heyman, supra.* In those cases, the court determined that, although the duty to file CTRs is imposed only on financial institutions, a third party who causes the institution to breach its duty to file may be held criminally

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[14] For this proposition the House Report cited, inter alia, *Anzalone* and *Varbel.* H.R. Rep. 99-746, *supra,* at 19 n.2.

liable under 18 U.S.C. 2(b). Those holdings comport with the broad language of Section 2(b), which extends liability to anyone who "causes an act to be done which if directly performed by him or another would be an offense against the United States." The statute is not limited to cases in which the party who is caused to commit the offenses does so knowingly and for that reason is himself guilty of the offense. Rather, as the Reviser's Note to 18 U.S.C. 2 states, the aiding and abetting statute:

> removes all doubt that one who puts in motion or assists in the illegal enterprise or causes the commission of an indispensable element of the offense by an innocent agent or instrumentality, is guilty as a principal even though he intentionally refrained from the direct act constituting the completed offense.[15]

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[15] The Reviser's Note also indicates that Section 2 was intended to embrace this Court's decision in *United States* v. *Giles*, 300 U.S. 41 (1937). There, the Court upheld the conviction of a bank teller under a statute that prohibited bank employees from "mak[ing] any false entry in any book * * * of a Federal reserve bank or member bank." 300 U.S. at 43. The defendant was convicted of having caused a bookkeeper for the bank to make false deposit entries in the bank's ledger, by wrongfully withholding from circulation certain deposit slips prepared for particular bank customers. Although the defendant had not himself made the false entries, and although the "innocent bookkeeper was the teller's * * * unconscious agent," the Court held that "the statute [was] broad enough to include deliberate action from which a false entry by an innocent intermediary necessarily follows." *Id.* at 48-49. So, too, for Section 2(b): it applies even where the defendant, by his actions, causes an innocent intermediary unwittingly to violate the law. Accord *United States* v. *Ruffin*, 613 F.2d 408, 412-413 (2d Cir. 1979); *United States* v. *Catena*, 500 F.2d 1319, 1322-1323 (2d Cir.), cert. denied, 419 U.S. 1047 (1974); *United States* v. *Levine*, 457 F.2d 1186, 1188-1189 (10th Cir. 1972); *United States* v. *Lester*, 363 F.2d 68, 72 (6th Cir. 1966), cert. denied, 385 U.S. 1002 (1967).

The court of appeals properly followed its earlier decisions applying this construction of 18 U.S.C. 2(b) in upholding petitioner's conviction. Although petitioner's structured transactions prevented the Emigrant Savings Bank from learning of its duty to file CTRs, petitioner's success in that endeavor cannot shield her from liability under Section 2(b).

2. Petitioner also claims (Pet. 12-15) that she lacked adequate notice that her method of structuring currency transactions was a crime because it was not accompanied by other wrongful acts, such as the use of an alias. That claim lacks merit. The district court found that petitioner (an experienced lawyer) "acted willfully, * * * with knowledge of the CTR reporting requirements and with the intent to cause the bank to fail to file a CTR" (Pet. Supp. App. 19), and the court of appeals did not disturb that finding (Pet. App. 2a). The requirement that a defendant's acts be willful "provides adequate protection for individuals who might unwittingly stumble into a violation of federal law." *United States* v. *Heyman,* 794 F.2d at 792. See *Boyce Motor Lines* v. *United States,* 342 U.S. 337, 342 (1952) ("culpable intent as a necessary element of the offense does much to destroy any force in the argument that application of the Regulation would be so unfair that it must be held invalid"). The district court's finding eliminates any claim that petitioner was somehow surprised by the application of 31 U.S.C. 5313 and 18 U.S.C. 2(b) to her. As this Court put it in *United States* v. *Ragen,* 314 U.S. 513, 524 (1942), "[o]n no construction can the statutory provisions here involved become a trap for those who act in good faith. A mind intent upon willful evasion is inconsistent with surprised innocence."

There is no legal basis for petitioner's contention that her conduct could not be criminal unless it was accompanied by some kind of "wrongful act," such as the use of

an alias or the concealment of the fact that she was working with another. None of the decisions on which petitioner relies to support this claim (Pet. 13-14) relied in any way on the additional "wrongful acts" as the basis for finding liability. And even if there were such a requirement, it would be satisfied here, since the conduct that provided the basis for petitioner's convictions served not only to prevent the Emigrant Bank from filing a CTR, but also concealed Monsanto's identity as a purchaser of the apartment, a concealment that had the obvious effect of reducing the risk of provoking an inquiry by federal tax authorities into Monsanto's affairs—something that Monsanto had every reason to fear, since he had failed to file federal income tax returns between 1978 and 1982.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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FEBRUARY 1988

U.S. GOVERNMENT PRINTING OFFICE: 1988—202-037/60289